If this contention is correct there can be no question, as he pointed out, of applying the cy-pres principle in the present case. The leading English case on this point *In re Wilson*[1] presents indeed some resemblance in its facts to those with which we are now dealing. Moreover if one accepts a further argument put forward by Mr. Atkinson that the words in the Indenture "upon and for the charitable trusts and purpose following" mean in effect "upon the particular charitable trusts set out in this document and no others", an argument I think correct having regard to the whole document, the persuasive authority of *In re Wilson*[1] becomes in my view so strong that I have no hesitation in accepting the submission the settlor did not have a general charitable intention. I do not think it is necessary for me, particularly in view of Mr. Atkinson's lucid exposition of the matter, to dwell at length on my reasons for reaching this conclusion, but I would make the following observations. With regard to the school it is evident from the Affidavit of Deft. 1 that the words "Kong Hoh Hak How" meant to the Settlor a school with which he was already personally familiar from his return visits to China, and, moreover, a school between which and his own family there existed a well established association. He had in mind something much more definite than just some school for his native village. I do not consider there was any intention directed to the promotion of learning generally, because even if the "maintenance for poor students" may be taken as indicating such an intention I do not believe any maintenance distinct from the administration of this school was envisaged by the Settlor. With regard to the ancestral house of worship it is clear this was a shrine for family purposes, and I do not think its essential private nature is affected by the provision for the distribution of alms or food to poor travellers or to other poor persons who might come to worship at the house or live in the vicinity, for I feel this provision was contemplated by the Settlor primarily as affording financial assistance to an activity of good works in connection with the ancestral house and not as an assistance of a general nature to the alleviation of the condition of the poor of the neighbourhood or of impoverished itinerants passing through it. If this view is correct not only is there an absence of a general charitable intention in respect of this trust, but in my opinion it has not that public element which a religious trust charitable in law must possess (*Gilmour v. Coats & Ors.*[2]). I have reached the conclusions, accordingly that the trust in respect of the school, though possessing no general charitable intention, is a valid charitable trust, but that the trust in respect of the ancestral house of worship cannot be regarded as charitable, and is, therefore, null and void.

It remains to give my views on the question of practicability, a question which, as I have indicated, has a bearing only on the school trust unless I am wrong in my conclusion the trust in respect of the ancestral house was not a legal charitable trust. The Court's views on this matter can only be based on the Affidavit of Deft. 1, the veracity of which I have accepted, and on common knowledge of conditions in China at the material times. Mr. Winslow, appearing on behalf of the Attorney-General, submitted Clause (g) of the Affidavit to which I have just referred gave the impression that it would have been comparatively easy between 1929 and 1934 to administer this trust from Singapore. The appropriate comment on this submission is, I think, that, as was seen in the second world war, it is in the case of an occupied or disturbed territory much easier for a small community to carry on its own internal affairs — and indeed it must do so to some extent if chaos is to be avoided — than for any external contacts to be regularly maintained. Apart from this there is the specific statement in Clause (e) of the same Affidavit: "Ever since that time" (i.e. 1918) "the village which is in a remote and isolated locality has either been in the hands of bandits or warlords or Communists and in the result the Settlor himself was never able to visit again before his death; and it has seldom been safe or practicable for any other members of his family to return there again ever for visits". In the light of this testimony I hardly think the suggestion that it has at times any how been practicable to administer these trusts can be accepted.

For these reasons I am of the opinion both the first and second Prayers should be upheld. In respect of the first I consider the most appropriate wording of the first sentences would be "upon the true construction of the Settlement and in the circumstances which have happened etc.", and I direct accordingly.

I defer making an order as to costs until ascertaining if counsel wishes to address the Court on the subject.

Order accordingly.

Solicitors: *Allen & Gledhill; R. C. H. Lim & Co.*

ANG KIM KOW v. REG.

[C. C. A. (Whyatt C.J., Taylor and Tan Ah Tah JJ.) March 19, 1956]

[Singapore — Criminal Appeal No. 10 of 1955]

Firearms and Ammunition (Unlawful Possession) Ordinance, 1946 — Unlawful possession of ammunition — Meaning of possession — Possession by carriers.

In this case the appellant and four other persons were jointly charged with unlawful possession of ammunition to wit bombs. The evidence for the prosecution

was that the five persons were in a hired car which was stopped by the police. In the car were found sacks containing explosives. The five men later led the police to a spot in a swampy scrub near a creek where the bombs from which the explosives were taken had been opened; and one of the prisoners pointed out the exact spot where parts of the cases were buried in the mud. Inspections revealed that the bombs had been stolen from a R.A.F. depot. The appellant in this case was the driver of the hired car. In his defence the appellant said that two days before he had conveyed the party and some implements to a place near the landward side of the creek; he was then engaged to go again two days later to bring some sacks of what he was told to be "fertiliser"; he went accordingly, waited some distance from the creek till the persons returned, helped them to load the sacks and was driving back towards the main road when the police stopped the car. The appellant was convicted and he appealed. The grounds of appeal were: (a) that the appellant had never been to the swamp before the arrest and therefore there was no evidence that he had participated in the dealing with the bombs; (b) that the directions as to the law of possession given to the jury was unsatisfactory.

Held: (1) the jury were insufficiently directed as to the points they should consider in deciding whether the appellant (as distinct from the other accused) participated in dealing with the bombs themselves, which were the subject of the charge; (2) there was an insufficient analysis of the circumstances in which the appellant conveyed the goods, with relation to the law of possession by carriers to enable them to appreciate fully the distinction in law between the case against the appellant and the case against the other accused; (3) for these reasons the conviction of the appellant was unsatisfactory and must be quashed.

Case referred to:—

(1) *R. v. Toh Ah Loh & Anor.* (1949) M.L.J. 54.

COURT OF CRIMINAL APPEAL.

L. Rayner for the appellant.

T. A. Mahony (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Taylor J. (delivering the judgment of the Court): —The facts in this appeal are these: Some heavy bombs were stolen from a R.A.F. depot and taken to a spot in swampy scrub near a creek where the bomb cases were split and the charges removed. The explosive was put into sacks, carried across the creek at low tide and loaded into a hired car which was on the way to town when police intercepted the party. The five men in the car were arrested and later led the police to the place where the bombs had been opened; one of the prisoners pointed out the exact spot where parts of the cases were buried in the mud.

The five men were jointly charged with unlawful possession of ammunition, to wit the bombs, and after a long trial all five were convicted. One only appeals. He was the driver of the car.

From the large quantity of material and many other circumstances it is obvious that this was not a one man job. It was a clear case of joint possession by several persons but not necessarily by all five. The whole question in this appeal is whether it was established that the driver had possession jointly with the other four. It is necessary to emphasise and to bear in mind throughout, that the accused were not charged with possession of the explosive in the car; they were charged solely with possession of the bombs in the swamp.

The first point taken for the appellant was that he had never been to the swamp before arrest. He was examined and cross-examined at the trial at very great length and parts of his evidence were obscure but the gist of his defence was clear; he said that two days before arrest he conveyed the party, and some implements, to a place on the landward side of the creek; they engaged him to go again, two days later, to bring away some sacks of, as they said. "fertiliser;" he went accordingly but because the track was bad he stopped at a place a furlong or so short of the creek, waited there till they returned, helped them to load the sacks and was driving back towards the main road when the police intercepted the car.

The officers who made the investigation said, in vague and general terms, that all the accused led them to the swamp. No one said that at any stage the appellant was in front or that he made any gesture or gave any other indication. It is obvious that the police could not have found the spot, without prolonged search, unless they had been led to it but that does not raise an inference that the appellant was one of the guides. This part of the prosecution evidence is entirely consistent with the case for the appellant that he was not a leader but one of those led.

It was also contended that the directions as to the law of possession given to the Jury were unsatisfactory.

The word "possession" is a very flexible word with many variations of legal meaning according to the many different contexts in which it is used. It is impossible to frame any short and clear definition of the term which will be generally applicable in criminal cases, quite apart from the numerous other shades of meaning which the word may bear in civil proceedings. It is necessary to ascertain the meaning in each instance, having regard both to the facts and circumstances and to the context of the word in the relevant law.

Reference was made, both at the trial and on the appeal to *R. v. Toh Ah Loh & Anor*[1] in which this Court stated certain characteristics of possession. That passage is to be understood as applicable to cases generally similar in their facts to the case then before the Court which was a case of labourers employed to unload prohibited goods. All cases of possession involve some element of knowledge but the nature and extent of the relevant knowledge vary greatly. In particular, cases

of possession of stolen property should be distinguished because there the main question is whether the accused knew that the goods were stolen, not whether he knew their nature.

Where the accused is a carrier, a different set of questions arises because a bare carrier of goods ordinarily has only custody, not amounting to possession. Further, the position of a carrier of goods alone is distinguishable from that of a carrier of passengers with their baggage. When a woman boards a taxi her handbag remains in her exclusive possession throughout and the driver does not have even joint custody. The fact that he helps her to load a suitcase does not necessarily alter this position though if she temporarily left the vehicle he would have custody during her absence. Where the goods are not ordinary passengers' luggage other questions may arise. Each case depends on its own facts.

In the present case the learned trial Judge amplified the *dictum* in *Toh Ah Loh, supra,* with illustrations explanatory of the element of control by several persons jointly; these directions had direct and proper reference to those of the accused who were concerned in splitting the bombs in the swamp. He laid some emphasis on the association of all five in the enterprise. He carefully directed the Jury to consider the case of each accused separately. He said that the mere fact that the appellant knew that the contents of the sacks in the car were explosive would not, of itself, be sufficient to indicate that he was one of the people controlling the bombs on the other side of the river. Later he said that the defence of the appellant was, in effect, that he was only the driver and if the Jury thought that he was only the driver and that was the only reason he was there, then he would be entitled to be acquitted.

The combined effect of these directions, coupled with the references to the bombs having been stolen from the R.A.F., a fact which was not really relevant to the charge, may have been to leave the Jury under the impression that if they found the accused to have had guilty knowledge of the nature of the enterprise they could infer that in the earlier phase he had possession of the bombs in the swamp, jointly with the others. This was not a correct view.

Where a man is charged with possession of contraband the question whether he knew the goods were contraband is one issue. The question whether he had possession is a separate, and complex, issue involving a mental element. The mental element in "possession" is not knowledge as to whether the goods are contraband.

A carrier may or may not have guilty knowledge; he may or may not have possession; if he has guilty knowledge without possession he may be convicted of abetment or of some other statutory offence.

In the case before us the two main grounds of appeal are not independent; they interlock. We think that there was insufficient analysis of the facts, particularly with regard to the crossing of the river, and that the Jury were insufficiently directed as to the points they should consider in deciding whether the appellant (as distinct from the other accused) participated in dealing with the bombs themselves, which were the subject of the only charge. We also think that there was insufficient analysis of the circumstances in which the appellant conveyed the goods, with relation to the law of possession by carriers, to enable them to appreciate fully the distinction in law between the case against the appellant and the case against the other accused. For these reasons we are of opinion that the conviction of the appellant was unsatisfactory and must be quashed.

Conviction quashed.

L. v. L.

[O. C. J. (Tan Ah Tah J.) May 4, 1956]

[Singapore — Divorce No. 55 of 1955]

Divorce — Nullity — Incapacity of husband — No apparent defect — "Consummation" — Erectio and intromissio — Wife virgo intacta after 2 years of marriage — Incapacity quoad hanc — Presumption of impotence — Decree nisi.

During 2 years' cohabitation following a ceremony of marriage the man made unsuccessful attempts to consummate the marriage, and in fact it was never consummated. The Court granted the woman on her petition a decree *nisi* of nullity, notwithstanding that the respondent was apparently capable, acting on the presumption of law that the respondent was incapable.

Cases referred to in argument :—

(1) *R. v. R.* (1952) 1 All E.R. 1194.
(2) *D–e v. A–g* (1845), 1 Rob. Ecc. 279.
(3) *G. v. G.* (1912) P. 173.
(4) *Kay v. Kay* (1935), 152 L.T. 264.

DIVORCE PETITION heard in *Camera.*

This was a petition by the woman for a decree of nullity of marriage on the ground of the respondent's inability to consummate the marriage. The respondent did not defend the petition.

The parties were married in 1953 at the Registry of Marriages, Singapore. Several attempts were made by the respondent to consummate the marriage but in each case he failed to effect *intromissio* at the crucial moment as he could not maintain *erectio.* They lived together for nearly two years before she left him. The medical inspectors appointed by the Court, reported